

## **B160 COMMENTS FROM ENVIRONMENTAL CAUCUS**

October 2003

The following represent the comments on Chapters 1 through 6, based on the September drafts. These comments are in addition to those previously sent by individuals from the caucus which are generally not repeated below, except to emphasize critical points that we want to assure are not overlooked. We have also reserved most of our comments in this document for the major points we wish to make; we have not included minor edits that we expect will be corrected as a part of the normal review process. With one exception, we have also not commented on individual Region reports (Chapter 4) since those have been reviewed separately.

### **Chapter 1 – Summary and Overview**

The caucus is pleased to see the Draft “Investment Guide” as a part of Chapter 1. The orientation toward conservation savings and highlighting the potential savings of existing water supplies is a welcome change from the “gap analysis” orientation of past Bulletins. We would encourage you to include ranges for each of the potential benefits, to provide the sources for all ranges shown, and to specify whether the cost column is one time capital costs, life cycle costs, or whether it includes other costs. While the “Investment Guide” sets up some real challenges for California, experience with existing conservation programs has shown that they are usually more cost effective than other alternatives for meeting future needs. This last point probably needs to be discussed related to the “Investment Guide.”

The quantification of the “unmet environmental requirements” paragraph is critical to the credibility of the document. We look forward to an expansion and detailed explanation of this subject in Chapter 3 and we will be supplying detailed quantifications in the near future for use in that Chapter.

Under Key Points, the last bullet on the page should emphasize that despite budgetary limits, “the state will take a *leadership* position to assure a sustainable water future for California.” We feel that the state’s leadership role must be emphasized, where appropriate. Further amplification of this point is provided below, in Chapter 6, the State Role.

On the first page of the summary, the statement about not knowing much about the “where” and “how much” of groundwater overdraft needs to be amplified with a description of the critical information that is missing.

Some of the caucus members have concerns about ideas that have gotten lost or watered down in the current draft; at one point the drafts articulated public trust responsibilities and problems of over-allocation of water rights as over-arching concerns. In the current draft, hydrology, catastrophic events and regulatory actions are classed in the same category of “external” forces that we’re advising water agencies to engage with a resilient



tool kit. We've mentioned a systemic connection between ground and surface water yet the language selected at several points allows readers to slip backward into old impressions of a situation that we know doesn't fit the hydrologic system we are trying to "sustain." We should not use words that lead people to believe that ground and surface waters can be treated as separate resource systems. Chapter 1 says that groundwater overdraft threatens the sustainability of "that resource," not the interlinked system.

The environmental justice theme should be developed with a couple more sentences up front since it is still new to so many water planners and the impacts are not well explained in other sections.

## **Chapter 2 – California Water Today**

The water rights description is informative, but the question of over-allocation of rights compared to water available in the system should at least be mentioned, and it should not be encased totally within the rubric of State-Federal relations in a discussion of Native claims.

The public trust language is too curtailed and major elements don't appear. It is important to say at the beginning, "California agencies have legal obligations to the public when they make decisions affecting public trust assets. Most of the water in the state is a trust asset under the public trust doctrine." Then continue as presently considered. In the currently proposed wording, readers could be forgiven for thinking that fiduciary responsibilities began in 1983 after the Mono Lake Decision.

The section on competing and conflicting jurisdictional roles and responsibilities needs a lot of work to sharpen understanding of the problems. The reference to "NEPA and CEQA safeguards" seems misplaced if the implication is that these review processes can remedy the problem.

Page 2-18 lists new surface storage as a challenge – which it certainly is. However, a more immediate and realistic challenge may be better integration, management and "retrofit" of existing infrastructure (such as existing dams) to address current needs and priorities, including environmental protections and restoration.

## **Chapter 3 – Planning for an Uncertain Future**

As you are aware, past bulletins have not adequately addressed unmet environmental water objectives and we believe that this plan must include a quantified summary of such unmet objectives. We believe that a thorough and consolidated quantification of unmet environmental water needs is something that has never been accomplished at the state level and this quantification will be one of the unique and most important features B160-2003. A September 29 memo to DWR from Spreck Rosekrans and Ann Hayden of Environmental Defense has provided preliminary quantification information for unmet



environmental water needs. DWR staff is currently reviewing this memo. Although the memo is considered preliminary and ED is working to refine and complete the data, the memo has already provided specific quantification of water needs for the Trinity, American, Stanislaus, and San Joaquin Rivers as well as reviewed the environmental water requirements of the CALFED ROD, the CALFED Ecosystem Restoration Program, the CALFED Environmental Water Account, CVPIA B2 requirements, the Plan for the Anadromous Fish Restoration Program, and Level 4 Refuge Supplies. We will not consider B160-2003 a complete document without an adequate quantification of these environmental water needs.

A number of the members of the caucus still feel that there are still not significant differentiations among the scenarios, especially the need to significantly differentiate the High Efficiency and the Resource Intensive scenarios. As an example, under the Resource Intensive scenario, why would we expect: "Wetlands and native vegetation [to] flourish through high environmental protection"? And why do we think there will be a "sense of the state and its policy [will be] to sustain this high degree of environmental protection"? This statement does not follow for this scenario and needs to be removed.

Please remove the "Pie In The Sky" description for the High Efficiency scenario. As previously pointed out in our comments, this is inappropriate and expressive of an attitude that we should not be projecting.

Under the descriptive factor for the High Efficiency scenario: "New developments and infrastructure (such as roads) as designed to minimize impacts to the natural drainage patterns and water quality of watersheds," add "and maximize water retention through underground cisterns and rooftop cisterns" [for more info, please refer to [treepeople.org](http://treepeople.org) and their T.R.E.E.S. project. Also add that new developments are not built in floodplains. Under the same scenario descriptions, "inadequate funding for urban water use efficiency and continued resistance by some water agencies to implement urban BMPs," add "agricultural water use efficiency" and "agricultural water agencies."

Under Key Factors, we would support and encourage you to add a trend table showing some history of these key factors. The information is readily available.

We feel that you should add "Water Quality" and "Ground Water Quality" as key factors affecting water management.

## **Chapter 4 – Regional Integrated Resource Planning**

In the introductory materials, the Bulletin should comment on the change of objective from reliance on imported waters to more reliance on local supplies and local transfers.

B-160 does not yet describe how the state proposes to resolve conflicts between regions. The current draft acknowledges that such conflicts do sometimes arise, and it indicates that the State will take the lead in resolving them, but there is no indication as to what



measures will be undertaken, in what forum(s), what principles and priorities will be applied, or even which state agency or agencies will be responsible. Particular attention must be paid to the problems that often develop (or become evident) some time after the approval stage and thus don't necessarily have a trigger for state involvement. With so little detail about the state's intentions, we don't really have a "plan" yet for resolving inter-regional conflicts, which seem likely to grow more vexing and more numerous in the challenging times B-160 foresees. In the absence of a plan, it's reasonable to expect that increasing inter-regional conflicts will get addressed by increased litigation. Readers can hope that the state will respond effectively to lawsuits and court orders, but this isn't the most constructive and proactive approach to an acknowledged problem, and it isn't really leadership.

In the Sacramento Region, we take issue with the sentence in the third paragraph of Page 4-35: "One of the most significant water quality problems in the region is mercury, a legacy of the California gold mining heritage." While mercury is still a problem, more significant is the 500 miles of Central Valley streams that are polluted by pesticides from agricultural and urban runoff. This information needs to be included.

## **Chapter 5 – Resource Management Strategies**

**Economic Incentives Policy.** This management strategy attempts to survey current incentives policy in California, declares that "a main purpose of economic incentives policy is to reduce water demands," but neglects to mention or examine the CVP subsidy policy, which dwarfs most other incentives policies in impact and works against the strategy's stated purpose. This neglect seems unreasonable, and a disservice both to the strategy and to the reader who may be seeking education about economic incentives. B-160 authorities have said that federal policy isn't really the state's business, but this seems inconsistent. Interior spokespeople have indicated repeatedly that they want and need to work with states and regions; B-160 says repeatedly that the State wants and needs to work with everybody; and a major thrust of this update is that problems must be addressed from the bottom up. There must be a discussion of CVP water pricing in this strategy narrative for it to be credible.

Additionally, the economic incentives narrative has several missing points. First, pricing which is related to water quality management should be mentioned. This has both urban and agricultural applications. Second, there is hardly any mention of rates and charges related to agricultural water use, which is more complicated than just CVP rates. Can the writers enlist someone on the Advisory Committee or a good agricultural economist to help out? Carolyn Yale can suggest some names if needed.

**Water Transfers Narrative.** In general, we feel that the most recent version of the narrative is a significant improvement over earlier drafts. The two possible remaining issues are 1) how the public trust is addressed and 2) how the recommendations are presented. Recent AC discussions regarding the extent to which public trust should be addressed in the narrative concluded that this narrative would include a more narrowly



defined discussion of public trust, as well recommendations that include two additional points relevant to public trust. While language specific to public trust (authored by Virginia Cahill of the Attorney Generals office) has been drafted, it appears that this text will be incorporated primarily in Chapter 2 and Chapter 4. From our review, there did not appear to be additional discussion of the public trust in this version of the narrative, although the reader is directed to this text and Chapter 2 and Chapter 4 in one of the recommendations.

In terms of how the recommendations are stated, specific agencies are not identified as the environmental caucus has recommended. We understand that DWR does not have the authority to tell other agencies what to do, but many in the caucus believe that the recommendations will not be useful or effective in the long-run unless the roles of specific agencies are highlighted. It was previously mentioned that DWR would look into discussing these recommendations with the relevant agencies to inform them of their inclusion in the plan. We recommend that this coordination step be accomplished by DWR. It appears that the recommendations outlined in the Ecosystem Restoration narrative point to specific agencies and this approach can be used throughout B160.

Also in the Water Transfers Narrative, use of the term "environmental justice" is essential in describing the nature of third party impacts – the current language about impacts to source areas being more than offset by benefits in receiving areas doesn't embrace the experiences of vulnerable communities and tends to exclude them as participants in statewide problem-solving. The issues that a public asset may be inappropriately privatized or that the public is put in the position of buying back its own resources are never mentioned in the discussion of environmental water in the transfer market, nor is the issue of sacrificed potential development of source areas or the increased dependence of importers on external sources emphasized. The "concern that short term transfers being used for long term demands" should be explained in more than just the environmental water context. Demand hardening is occurring in agricultural and urban sectors as well. Also, the issue of over appropriated water and the potential misuse of the transfer framework to establish rights that may never have existed are not explained in worries about "paper water." The data gaps and potential for abuse are very real.

We have previously indicated our satisfaction with the latest draft of the Ecosystem Restoration narrative. We have two minor comments that may still be considered: It might be helpful to indicate in the issues section that sprawling development and spreading asphalt and concrete to accommodate the tastes of increasing human populations simply make less space available for ecosystem function. Also, the note about public trust might suggest turning to other sections for "more information" on the doctrine, since there are no way that these sentences can contain enough detail about the doctrine or its role in integrated water resource planning.

In the Conjunctive Management strategy, descriptions of "groundwater storage" might be developed which give a better sense of groundwater as a flowing rather than a static resource that somehow sits below the parcels of owners on the surface to pump when they are need.



Under potential benefits for Conjunctive Management (Page 2), we need to clarify ways in which these benefits can be accomplished and, where possible, estimates of the benefits. Page 4 could use an example of the interconnection between surface and groundwater affecting streams. Pages 4-5 should include discussion of the clean up of contamination of groundwater basins where water supply or potential supplies are affected.

In 5-8, it is important to retain the information that explains that CALFED funding commitments made in 2000 through the ROD have fallen far short of the amounts planned.

Page 5-11: At the beginning of the "Measurement, Planning, and Evaluation" section, add the following to the opening paragraph: "Measurement of water to the customer and volumetric price are also mandated by federal law." Before the paragraph that begins, "There is a lack of sufficient statewide comprehensive data on the acreage...." please add, "A major area of concern identified by the Bulletin 160 Public Advisory Committee was the lack of data collection and analysis."

Page 5-16: In the paragraphs that mention Dr. David Goldhamer, include a sentence that indicates that Dr. Goldhamer is funded by USBR for this project and the number of years and extensive data that's been collected. As it now stands, the paragraph makes it sound like he's just a UC Cooperative Extension researcher who happened to be asked a question about RDI recently. In view of the viewpoints of the agricultural caucus toward RDI, Dr. Goldhamer's credentials need to be clearly spelled out.

Chapter 5: Surface Storage, Page 3: Under drawbacks, this section does not portray a balance, given the many paragraphs extolling the virtues of storage. Please at least add, "Surface storage dams in the Central Valley have blocked 95% of former salmon and steelhead habitat. Dams have caused flow and sedimentation problems. Reservoirs have become vectors for mercury and other metals." We obviously feel that a more balanced description of surface storage must be presented.

In Surface Storage – Regional/Local, recommendation #2 is objectionable in the sense that local projects must be based on some guiding principles. The recommendation would be better if a set of guiding principles were recommended.

In Desalination, the main recommendations of the recent Desalination Task Force should be highlighted.

We feel that the Urban Water Use Efficiency strategy narrative is excellently done.

In the Recommendations, we would like to add a bullet that states: "Institute pricing incentives that encourage higher use of water efficient irrigation technology such as drip and micro sprinkler systems, where appropriate."



## Chapter 6 – State Role

As indicated in Chapter 4, the 3 E's (environment, economics, equity) require a commitment that entails the "leadership" needed from state agencies to move in more sustainable directions. While "leadership" is indicated in two places in Chapter 6 on the State Role, we visualize a stronger state leadership role and would like to see the leadership role more apparent in the chapter recommendations. We must be certain not to lose the "leadership" role for state agencies as we come to grips with the idea that some of the public may be demanding that their government representatives undertake their "legal duties." There are some actions that the State is going to have to be prepared to take to protect statewide interests in a sustainable water use and delivery system. Regional authorities and the general public at large should be able to get some information about that in the initial sections of the State Water Plan.

One of the additional leadership responsibilities may be the addition of a performance audit function for the state instead of just "assess regional plans and provide regulatory oversight...." (Page 6-1,2). Another example is: "The state should assist *and take a leadership role* in regional efforts to foster..." (Page 6-5, Promote 4 Cs). A further example, under 4 Cs is: "These regional initiatives must include a public review process with open and transparent decision-making, as well as.....*oversight by state agencies to assure the 4 C's.*" In some cases, local landowners and stakeholders have excluded concerned members of the public. DWR could play an important role in keeping the "public" in public policy.

The presentation of most general Public Trust discussion in Chapter 4 (Importance of Regions), with an introduction in Chapter 2 but only a single recycled bullet point and scattered mentions in Chapter 6, suggests that public trust responsibilities lie mostly with the regions and not so much with the state. The addition to Chapter 6 of recommendations developed in the management strategy sections could help remedy this, but if the state intends effective continuing supervision of trust resources, surely improved discussion is appropriate under the State Role chapter.

There needs to be more on the state role as public trustee – with duties to act in the public interest. Perhaps a sentence could be added that says: The trust has been firmly established as an adaptive management tool in California for the one hundred and twenty years since hydraulic mining practices were outlawed by Federal and State courts. Obligations to Native Tribes are greater than merely to engage them in assessments of needs. And this might be mentioned in a slightly enlarged environmental justice obligation. It could be done partly by adding to the thought in the sentence starting, "What this means in practical terms is to avoid or mitigate the historically disproportionate share of negative impacts borne by vulnerable communities as more powerful actors have implemented policies which tend to direct these impacts toward those less fortunate." or something like that. Another rhetorical change that might be valuable may be to speak in terms of "our environment" rather than the more removed "the environment" which is far easier to ignore.



Chapter 6 is vague or silent about how the State plans to address some kinds of interregional issues (environmental justice, public trust, area-of-origin, and even some interregional environmental problems if they don't interest CalFed). Also, the chapter doesn't make it clear whether the state plans to directly address existing interregional problems or just encourage mitigations as new projects come along in the future. We request more specificity and clarity, and inclusion of the recommendation: "SWRCB should publish periodic assessments of the condition of the public trust resources under its protection". This would be a positive if modest step towards better continuing supervision, it would generate information helpful for planning efforts at all levels, and it would tend to promote the improved interagency communication that B-160 should support.

We have also earlier pointed out that the CVP represents a bigger block of water than most people realize that is provided on very different terms to a small group of contractors who will engage in the market mechanisms outlined in many parts of this plan. To speak in terms of an emerging "market" in singular form for water in the state is a disservice to the public, and public subsidies should be more prominently acknowledged in the plan.

Under Financing the Plan, has DWR consulted with the State Treasurer on this section? It would probably be a helpful step if not already accomplished.

### **General or Overall Comments**

We do not feel that the subject of Endangered Species is adequately covered throughout the Bulletin. We suggest you have a brief discussion of the impact of endangered species on water management and planning and that some information on current listings be included, perhaps in Chapter 2, "Challenges Facing California..." or under 2-13, "Degradation of the Ecosystem."

We agree with a point that has been made at Advisory Committee meetings that the phrase "water supply reliability" is a misleading title that tries to hide the real meaning, which is simply "water supply." We recommend that you edit the document and wherever "water supply reliability" is used it should be changed to "water supply," unless the discussion is actually about reliability. This will be different from the CALFED practice in using this term, which is where it originated as the euphemism for water supply.

We feel that the document has a reasonable balance of viewpoints, even though we could make the case for increased water conservation and reclamation, especially from the major water users. The draft document is a welcome and necessary correction of the past tendency for B160 to use the concept of water "demand" without reference to economics and to produce a "gap analysis" based on that "demand" which then points only to construction of surface storage as a solution. We feel that your emphasis on conservation



as a large part of the solution for future water needs is an appropriate orientation for the state of California.

In summary, we feel that the draft B160-2003 is unique in the following major ways:

- The increased emphasis on conservation as a larger share of the solution to future state water needs.
- The emphasis on economics and how that can play into the future demands for water.
- The quantification of unmet environmental water needs, which must become a continuous part of the “needs” equation.
- The visibility of public trust considerations in numerous and appropriate sections of the Bulletin.